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 GILLENS, WILLIAM MAESTAS,
 BOARD OF DIRECTORS FOR THE
 PEOPLE'S COLLEGE OF LAW,
 CHRISTINA MARIN GONZALEZ;
 ROGER ARAMAYO; ISMAEL
 VENEGEAS; CLEMENTE FRANCO;
 HECTOR PENA; PASCUAL TORRES;
 JESSICA VIRAMONTES; and CAROL
 DEUPREE

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

TODD R. G. HILL,

 Plaintiff,

 v.

THE BOARD OF DIRECTORS,
 OFFICERS AND AGENTS AND
 INDIVIDUALS OF THE PEOPLES
 COLLEGE OF LAW; et al.

 Defendants.

Case No. 2:23-CV-01298-JLS-BFM

**REPLY TO PLAINTIFF'S
 OPPOSITION TO DEFENDANTS'
 MOTION UNDER F.R.C.P. 41(B)
 AND 12(B)(6) TO DISMISS
 PLAINTIFF'S SECOND AMENDED
 COMPLAINT**

DATE: N/A per Dkt.
 TIME: N/A per Dkt.
 DEPT: 780, 7th Floor

Magistrate Judge Brianna Fuller Mircheff

Defendants JESSICA VIRAMONTES and CAROL DEUPREE (hereinafter collectively referred to as “Defendants”) hereby submit their Reply to Plaintiff’s Opposition to Defendants’ Motion to Dismiss with Prejudice, Plaintiff’s Second Amended Complaint filed September 20, 2023, as docket number 55 and the entire action

I. INTRODUCTION

The Honorable Magistrate Judge Brianna Fuller Mircheff has recommended Defendants’ Motion to Dismiss the Second Amended Complaint (ECF 58, 78, 88, 89, 92, 110, 122) be granted for failure to comply with Federal Rules of Civil Procedure (“FRCP”) Rule 8 and additional deficiencies that Plaintiff cannot cure. (Honorable Brianna Fuller Mircheff’s Interim Report and Recommendation 12:7-17:20.) Docket Number 122, incorporated in the recommendation to dismiss Plaintiff’s Second Amended Complaint, is the Motion to Dismiss filed by Defendants Jessica Viramontes and Carol Deupree. Provided the Magistrate Judge has recommended Plaintiff’s Second Amended Complaint be dismissed, in part as to Docket No. 122, Defendants provide this Reply to Plaintiff’s Opposition to Defendants Motion to Strike as Plaintiff’s Second Amended Complaint has yet to be dismissed.

Plaintiff’s Opposition to Defendants’ Motion to Dismiss Plaintiff’s Second Amended Complaint (“Opposition”) fails to address the deficiencies in his Second Amended Complaint (“SAC”). Instead, the Opposition demonstrates a misunderstanding of the Federal Rules of Civil Procedure and an inability to comply with the rules and this Court’s prior rulings. The Opposition does not rebut Defendants’ arguments for dismissal, and much like the SAC, contains confusing and incoherent paragraphs which do not remedy the deficiencies in the SAC.

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II. DEFENDANTS DO NOT NEED TO ADDRESS THE MERITS

Plaintiff's Opposition asserts, at various incongruent locations, that Defendants must address the merits of the allegations made in his Second Amended Complaint. (Plaintiff's Opposition to Defendants Motion to Dismiss at 5:1-5:6 and 15:5-15:10) As previously argued, FRCP Rule 8 (which address general rules of pleading) and FRCP 12(b)(6), Defendants are not required to address the merits of Plaintiff's claims. *Swierkiewicz v. Sorema N.A.*, 534, U.S. 506 (2002) citing to *Scheuer v. Rhodes*, 416 U.S. 232, 236. Despite Plaintiff's assertions to the contrary, reference to the merits of Plaintiff's claims were properly excluded from Defendants' Motion. Plaintiff attempts to bypass correcting the deficiencies with his pleadings by simply deflecting his arguments to how he believes he has been wronged. Plaintiff has still not yet properly framed the issues of the case.

III. PLAINTIFF'S OPPOSITION FAILS TO PROPERLY ADDRESS F.R.C.P 8

Plaintiff's confusing and unorganized Opposition exemplifies his inability to comply with FRCP 8. The Opposition contains several different conclusory attempts to argue Plaintiff has complied with FRCP 8 with no clear basis or example as to why the SAC actually complies with the rule.

Intermixed at varying degrees, Plaintiff's Opposition intentionally mischaracterizes Defendants' Motion. For example, Plaintiff argues that the only contended issue in his Second Amended Complaint is the length. (Plaintiff's Opposition at 4:25-4:27, 5:23-7:18, 16:12-17:10, 18:24-19:23, 23:11-24:2) Plaintiff then cites to caselaw that provides examples where lengthy complaints were acceptable because the complaints contained specific allegations and were written with an organized structure. Specifically, Plaintiff initially cites to *Hearns v. San Bernadino Police Dept.*, 530 F.3d 1124 and concludes that his Second Amended Complaint, while lengthy, is clear, has an organized structure, and has specific allegations. However, Plaintiff provides no support or authority, outside of his own

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1 conclusions, that show how his Second Amended Complaint is similar to the
2 Complaint in *Hearns*.

3 Plaintiff repeats the same argument on Page 19 of his Opposition by citing to
4 *Briggs v. Montgomery*, 2019 WL 2515950 (D. Ariz. June 18, 2019). In *Briggs*, a 53
5 page Complaint survived a Rule 8 challenge because the Complaint was
6 “intelligible, and clearly deliniate[s] the claims and the Defendants against whom
7 the claims are made.” *Briggs*, 2019 WL 2515950 The Opposition fails to understand
8 that length or page number is not the only problem with the SAC. Instead, the SAC
9 is disjointed, confusing, unintelligible, makes references to other paragraphs without
10 clarity, and contains non-specific conclusory allegations without articulating
11 elements necessary to state each cause of action alleged. This case is therefore
12 distinguishable from the pleading at issue in the *Briggs* case. Additionally, per
13 Magistrate Mircheff’s Interim Report, Plaintiff’s Second Amended Complaint is
14 excessively long, often confusing and exhibits the landmarks of a shotgun pleading
15 (Magistrate Judge Mircheff’s Interim Report at 12:10-12:15).

16 Plaintiff’s Opposition attempts to evade FRCP 8’s applicability by making
17 disparate arguments that do not address his Second Amended Complaint’s failure to
18 comply with the procedural rules. Plaintiff argues that the case should be heard on
19 the merits and dismissal would produce procedural unfairness because the litigation
20 process has not unfolded. (Opposition to at 5:1-5:6 and 15:5-15:10).

21 The Opposition also asserts that Rule 9 permits Plaintiff to ignore compliance
22 with Rule 8. (Opposition at 24:17-24:8) To the contrary, the rules must be read and
23 interpreted together. Rico and fraud claims must be clear and concise. *U.S. ex rel.*
24 *Williams v. Martin-Baker Aircraft Co., Ltd.*, 389 F.3d 1251 (D.C. Cir. 2004).
25 Plaintiff’s SAC does not contain any clear or concise allegations “with particularity
26 the circumstances constituting fraud or mistake” in order to properly provide notice
27 to defendants of Plaintiff’s claims in violation of FRCP Rule 9(b). Magistrate Judge
28 Mircheff’s Interim Report noted, “Nor can length and detail in the SAC be justified

1 by Rule 9 of the Federal Rules of Civil Procedure. (ECF 82 at 19.) . . . It does not
 2 provide Plaintiff license to file a bloated pleading.” (Magistrate Judge Mircheff’s
 3 Interim Report at 15:4-15:9).

4 The Opposition also relies on the alleged complexity of the claim to justify
 5 how the SAC was written (Opposition 25:1-25:8) However, Plaintiff provides no
 6 authority for such an interpretation and he cannot explain away his failure to comply
 7 with the Federal Rules of Civil Procedure by arguing that the allegations are so
 8 complex that the SAC does not need to comply with FRCP 8..Instead, he merely
 9 states that the SAC is nuanced and thus complies with FRCP 8. Of note, there is no
 10 complexity exception to the requirements of FRCP 8.

11 **IV. PLAINTIFF CANNOT UNILATERALLY CONVERT DEFENDANTS’**
 12 **MOTION TO A MOTION FOR JUDGMENT ON THE PLEADINGS**

13 The Opposition improperly asks the Court to convert Defendants Motion to
 14 Dismiss into a Motion for judgment on the pleadings. However, FRCP 12(c) clearly
 15 notes that a party may seek a judgment on the pleadings once the pleadings are
 16 closed. Fed. R. Civ. P. 12(c). Here, the pleadings are not closed as the Court has not
 17 yet ruled on any of the defendants’ motions to dismiss, and not one Defendant has
 18 filed an Answer. *See Doe v. United States*, 419 F.3d 1058 (9th Cir. 2005) (pleadings
 19 are closed once Defendants have filed an answer). Therefore, Defendants’ Motion to
 20 Dismiss cannot be converted because the pleadings are not closed.

21 **V. LEAVE TO AMEND SHOULD NOT BE GRANTED**

22 Case law clearly holds, “[a] complaint which fails to comply with rules 8(a)
 23 and 8(e) may be dismissed with prejudice pursuant to rule 41(b).” (*Nevijel v. North*
 24 *Coast Life Ins. Co.*, 651 F.2d 671, 673 (9th Cir. 1981) (Internal citations omitted).)

25 Plaintiff has had approximately four opportunities to draft a coherent
 26 pleading that complies with FRCP 8. Each attempt suffers from the same
 27 deficiencies as noted in this Opposition and Defendants’ Motion to Dismiss. This
 28 Court has given Plaintiff more than plenty of chances to comply with Rule 8.

Given Plaintiff's repeated failures to do so, the Court should dismiss the SAC with prejudice and not allow Plaintiff to amend his complaint.

DATED: May 1, 2024

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By: /s/Yvette Davis

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PROOF OF SERVICE

Hill v. The Board of Directors, Officers, et al.

Case No. 2:23-cv-01298-JLS-CFM

STATE OF CALIFORNIA, COUNTY OF ORANGE

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Orange, State of California. My business address is 2030 Main Street, Suite 1525, Irvine, CA 92614.

On May 1, 2024, I served true copies of the following document(s) described as **REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION UNDER F.R.C.P. 41(B) AND 12(B)(6) TO DISMISS PLAINTIFF'S SECOND AMENDED COMPLAINT** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY CM/ECF NOTICE OF ELECTRONIC FILING: I electronically filed the document(s) with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Participants in the case who are not registered CM/ECF users will be served by mail or by other means permitted by the court rules.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on May 1, 2024, at Irvine, California.

/s/Cindy A. Mulder

Cindy Mulder

SERVICE LIST
Hill v. The Board of Directors, Officers, et al.
Case No. 2:23-cv-01298-JLS-CFM

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